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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re GEORGE L. et al, Persons Coming Under the Juvenile Court Law.	B235808 (Los Angeles County Super. Ct. No. CK81249)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LORENA L., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Donna Levin, Juvenile Court Referee. Affirmed.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Lorena L. (Mother) is the mother of George and P. In August 2011, after George and P. were placed in the custody of their father, Jorge L. (Father), the juvenile court ordered conjoint counseling and monitored visitation for Mother and terminated its jurisdiction. Mother appeals. We affirm.

FACTUAL & PROCEDURAL BACKGROUND

Mother is separated from Father. The children lived with Mother. In February 2010, George, then 13 years old, reported that Mother had punched him during an argument. During an investigation, the Department of Children and Family Services (Department) determined that Mother had slapped George on two earlier occasions in 2009, was drunk at home, had thrown water at P. to discipline her, and had a history of domestic violence with Father before and after their separation. Mother denied hitting the children and being drunk. The children were removed from Mother's home and temporarily placed in foster care.

On February 18, 2010, the Department filed a petition pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).[1] In September 2010, the juvenile court sustained the allegations pursuant to section 300, subdivisions (a) and (b) that Mother physically abused George and P., had a history of domestic violence with Father, and abused alcohol. The children were placed with Father under the Department's supervision. Mother was allowed monitored visitation with the children, three times per week for three hours per visit with P., and once a week for two hours with George. Mother was ordered to participate in individual counseling, parenting classes, alcohol testing, and conjoint counseling with the children.

Mother appealed the jurisdictional findings as to P. as well as the dispositional order removing P. from her care. On September 13, 2011, we filed an opinion affirming those orders (case No. B228522).

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[1] All subsequent statutory references shall be to the Welfare and Institutions Code unless otherwise indicated.

After the petition was sustained, Mother began attending parenting classes but did not complete them. The class facilitator felt that Mother should attend many more sessions because she continued to blame other people and did not understand parenting concepts. Mother failed to enroll in individual counseling. In August and September 2010, she failed to attend three random alcohol tests, but tested negative on four occasions.

In November 2010, the Department approved a visitation monitor, a maternal aunt, and the monitor reported no concerns at two visits. The children's therapist reported that Mother was not ready to participate in conjoint counseling because she continued to deny the reasons for removal and spoke negatively about George. Mother had a monitored visit with George in December 2010 which ended prematurely when George became upset with her. At another visit later that month, George again asked to terminate the visit prematurely because Mother was talking about the case. Mother said she wanted the visits with George to stop until things settled down. George agreed, and P. said she did not want to visit with Mother alone.

At a meeting in January 2011 with the case worker and his supervisor, George confronted Mother about the abuse, and Mother continued to deny it.

At about the same time, there were some issues between Father and the children, but by March 2011, the social worker reported that Father provided the children with a safe and stable home and the children appeared to be happy and doing well. Father began conjoint therapy with the children and completed a parenting program. Mother continued to deny abuse or responsibility for the family's problems and accordingly, the children's therapist continued to recommend against conjoint counseling.

At a meeting with the social worker in January 2011, the monitor admitted leaving the children alone with Mother on three occasions. A new monitor was requested, but George said he wanted a neutral monitor who had no relationship with Father or Mother.

Mother reenrolled in the parenting program by March 2011 and continued to test negative for alcohol use.

George told the social worker in March 2011 he wanted to live with Father and visit Mother. P. wanted to live with both parents. Father wanted to keep the children, and wanted them to have contact with Mother, but said they needed to learn how to interact with her without the Department's presence. The Department recommended that jurisdiction be terminated granting Father sole physical custody with monitored visits for Mother, but giving both parents legal custody.

In June 2011, the children's therapist continued to recommend against conjoint therapy and felt it would have a negative effect on P.

On June 1, 2011, the court called a hearing as one held pursuant to section 364.[2] The social worker's reports prepared for the hearing indicated the children were still doing well in Father's care and that Father had effective parenting skills. Mother's visits had been limited to one hour per week, because of the children's schedules, lack of an approved monitor, or Mother's unavailability. The visits had been mostly positive. Mother interacted appropriately with the children and it was apparent that she loved her children and missed them greatly. Because Mother had discussed the case with the children, the social worker recommended monitored visitation.

At the hearing, the court denied Mother's request for unmonitored weekend visits. Mother's counsel asked for the social workers to set up one visit per week "times three." Father's counsel said Mother cancelled a lot of the visits. The court ordered the Department to assist Father in facilitating visits and in finding an appropriate monitor.

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[2] Section 364 provides, inter alia, "(a) Every hearing in which an order is made placing a child under the supervision of the juvenile court pursuant to Section 300 and in which the child is not removed from the physical custody of his or her parent or guardian shall be continued to a specific future date not to exceed six months after the date of the original dispositional hearing. . . . [¶¶] (c) After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker . . . establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn. . . ."

The court set the matter for a section 364 contested hearing on August 3, 2011. In a last-minute filing before that hearing, the social worker attached a letter from the children's therapist dated June 20, 2011, which indicated conjoint therapy might have a negative effect on P. Mother's therapist, however, wrote a letter on July 12, 2011, indicating Mother had been attending individual therapy, had accepted responsibility for the abuse, and had learned anger management and parenting skills. Mother's therapist felt she was ready to begin conjoint counseling with the children. The social worker called the children's therapist to discuss these recommendations, but the children's therapist still felt conjoint therapy was not recommended at this time.

At the August 3rd hearing, the social worker initially testified Mother was in compliance with her case plan. Mother's visits were positive, but she was only visiting P. once a week for three hours. On cross-examination, the social worker stated that Mother had not participated in conjoint counseling, so the Department had not yet recommended unmonitored visits. His understanding of the court orders was that Mother would be visiting P. only once a week, but he admitted he may have misread the court orders.

The social worker believed that the children would be at risk of emotional harm if they had unmonitored contact with Mother. Up until June 2011, Mother still denied abusing the children and believed she had done nothing to warrant Department intervention. He did not believe conjoint counseling with P. would be appropriate until Mother accepted responsibility for what happened in the past, but believed conjoint therapy would be helpful and that it should start when the children's therapist's recommended.

Father testified that if the court ordered him to arrange for conjoint counseling between Mother and the children, he would comply.

The court stated it did not believe Mother had been given a fair chance because the visits with P. were unnecessarily curtailed and conjoint therapy had not begun. It also stated it did not think Father could ensure that Mother received all her visits. It sanctioned the Department $500 for not complying with the visitation orders, and terminated jurisdiction, granting Father sole physical custody and joint legal custody. It

ordered parents to find a conjoint counselor and begin attending forthwith. Mother was to have three visits a week for three hours per visit with P., and one visit a week for three hours with George. The visits were to be monitored until after conjoint counseling began, at which time Father would have discretion to continue monitoring. The court entered the orders on August 10, 2011.

Mother appealed, contending that the juvenile court erred in conducting review hearings pursuant to section 364 rather than section 361.2. She also contends that the court abused its discretion by terminating jurisdiction. She argues that she was entitled to further reunification services because she did not receive the recommended number of visits and conjoint counseling.

DISCUSSION

1. Section 364

Section 361.2 provides, "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child." If the juvenile court places the child with the previously noncustodial parent, it may do any of the following: (1) order that the parent become legal and physical custodian of the child and provide reasonable visitation by the noncustodial parent, terminating its jurisdiction over the child; (2) order that the parent assume custody subject to the jurisdiction of the juvenile court and require a home visit by the social worker; (3) order that the parent assume custody, provide reunification services to the parent from whom the child is being removed, or order services solely to the parent assuming physical custody, or that services be provided to both parents, and make a subsequent determination at review hearings which parent shall have custody of the child. (§ 361.2, subd. (b).)

Section 364 provides that when an order is made placing a child under the supervision of the juvenile court in which the child is not removed from the physical custody of his or her parent or guardian, the hearing shall be continued to a specific

future date. The court shall hear evidence presented by the social worker, the parent, the guardian or the child and determine whether continued supervision is necessary.

We agree that the hearings should have been held pursuant to section 361.2 rather than section 364, since the children were placed in the custody of Father, a previously noncustodial parent. (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1493-1494, *see In re Bridget A.* (2007) 148 Cal.App.4th 285, 316.) Under section 361.2, the court has the discretion to either terminate jurisdiction over the child or provide services to either or both parents. (Subds. (b)(1) and (b)(3).) In determining whether to terminate jurisdiction under section 361.2, the juvenile court is required to determine whether supervision is still necessary. (§ 366.21, subd. (e).)

In *In re Janee W.* (2006) 140 Cal.App.4th 1444, two minors were removed from their mother's home and placed with their father after allegations of physical abuse by mother. After 18 months, the court concluded that the children could not safely be returned to their mother, awarded full legal and physical custody to their father and allowed mother weekly visits, and terminated jurisdiction. The mother appealed, contending that there was a need for continuing jurisdiction and that she did not receive adequate reunification services. At the six-month review hearing, the court referred to section 364 instead of section 361.2 when setting future hearings. (*Id.* at p. 1450.) On appeal, the error was found to be harmless. The evidence was uncontradicted that the girls were thriving in their father's care and that continued supervision was no longer necessary. There was ample evidence to support the termination of jurisdiction. (*Id.* at p. 1452.) The court held that failure to provide reunification services did not prevent the court from terminating jurisdiction once it determined that there is no need for further supervision of the children in the home of the previously noncustodial parent. (*Id.* at pp. 1454-1455.)

In *In re Sarah M.*, *supra*, 233 Cal.App.3d 1486, a minor was removed from her mother's home after a domestic violence incident, and placed with her father. The mother was allowed supervised visits but was not awarded reunification services. (*Id.* at pp. 1489-1490.) The court conducted the hearing pursuant to section 364 instead of

361.2 when terminating jurisdiction. (*Id*. at p. 1493.) The court of appeal noted that section 361.2 gives the juvenile court broad discretion but does not expressly state the factors on which the court must rely in deciding whether to terminate jurisdiction. The court concluded that when a child is removed from a custodial parent and placed with a nonoffending, noncustodial parent, termination of dependency jurisdiction is properly determined under the standards of section 361.2. (*Id.* at pp. 1493-1494; *see Bridget A., supra*, 148 Cal.App.4th at p. 316 [determining whether a court has the authority to return a child to the home of a parent while providing family maintenance services].)

Here, the juvenile court terminated jurisdiction and made orders providing services to Mother, the parent from whom the child was removed, as authorized by section 361.2. It implicitly made the observation that supervision of Father was not necessary, but ordered the Department to ensure visitation was encouraged. Thus, even though the court stated that the hearings were held pursuant to section 364, its orders were within the authority granted it by section 361.2. As in *Janee W.* and *Sarah M.*, we find any reference to section 364 to be harmless error.

Mother also contends that the court should have instead ordered further court supervision because of the Department's prior failings. She asserts in her reply brief that the application of section 364 was not harmless because Father was not ensuring attendance in conjoint counseling. She then asserts supervision was still necessary because counseling services were not provided.

When a child has been placed with one parent, the court has discretion to order services to one or both parents, whichever is in the child's best interests. (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651-652.) On appeal of that order, we will not reverse it absent a clear abuse of discretion. (*Id*. at p. 652.)

Mother had been receiving services from the Department since 2009, before the petition was first filed. She received parental counseling, individual therapy, and monitored visitation beginning in 2010. She was not consistent in attending classes, but finally completed them. She continued to act inappropriately during visits.

The children's therapist had strongly recommended against conjoint counseling up until the August hearing because Mother had continued to deny wrongdoing. There was evidence Mother had not been available for all the visits, and had continued to discuss the case with the children. The social worker reported prior to the June 2011 hearing that the visits had been limited due to the children's schedules, Mother's failure to identify a potential monitor, or Mother's unavailability. Mother often cancelled visits. Furthermore, she had shown only minimal progress since the services were first offered by the Department in 2009. We conclude that any lack of progress and delay in conjoint counseling were due in large part to factors within Mother's control and were not the responsibility of Father or the Department. We find the juvenile court's orders were clearly in the children's best interests and there was no abuse of discretion.

2. Termination of jurisdiction

Mother contends the court erred in terminating jurisdiction. She argues that Father might not comply with the court's orders for visitation and conjoint counseling. There is no evidence Father had prevented visitation in the past or that he would not comply with these orders in the future. Furthermore, the evidence was undisputed that the children were doing well in Father's custody. Continued supervision was no longer necessary. (*Sarah M., supra,* 233 Cal.App.3d at p. 1500.)

DISPOSITION

The juvenile court's August 3, 2011 orders (entered on August 10, 2011) are affirmed.

WOODS, J.

We concur:

PERLUSS, P. J. **ZELON, J.**